




STATE OF WASHINGTON

DEPARTMENT OF AGRICULTURE

P.O. Box 42560 • Olympia, Washington 98504-2560 • (360) 902-1800

September 13, 2005

TO: Affected Potato Producers and Interested Parties

FROM: Lynn M. Briscoe, Commodity Commission Coordinator 

RE: Recommended Decision – Petition to Amend the Washington State Potato Commission Marketing Order (Chapter 16-516 WAC)

Following this cover memo you will find the Director's Findings, Conclusion, and Recommended Decision on the petition filed by the Washington State Potato Commission to amend the Commission's Marketing Order, WAC 16-516. Here is a table of contents for your use when reviewing the decision.

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Please review the Recommended Decision. If there are parts with which you disagree, you may file statements with the Director in support of or opposition to all or part of this Recommended Decision. All statements must be received at the following address **no later than 5:00 p.m. on September 30, 2005**:

Lynn Briscoe, Commodity Commission Coordinator
WSDA, Administrative Regulations Program
PO Box 42560
Olympia, WA 98504
FAX: (360) 902-2092
Email: lbriscoe@agr.wa.gov

After receiving and considering all statements filed, the Director will make a Final Decision on the amendments. The Final Decision may be the same as the Recommended Decision or may be revised in light of any statements received. If the Director's Final Decision is to conduct a referendum on the proposed amendments, the Director will count the votes from those affected producers listed on the List of Affected Producers, as maintained by the Commission, to determine whether the referendum has passed. Under RCW 15.66.143, affected producers have the responsibility to ensure that their correct address and production information for the last three years is filed with the Commission. If you have a change of address or wish to confirm the information on file with the Commission, please contact the Washington State Potato Commission, 108 Interlake Road, Moses Lake, WA, 98837, Phone: (509) 765-8845, or Fax: (509) 765-4853 as soon as possible.

**BEFORE THE DIRECTOR OF THE
WASHINGTON STATE DEPARTMENT OF AGRICULTURE**

**Proposal to Amend the Washington State Potato
Commission Marketing Order (WAC 16-516)**)
_____)

**Findings, Conclusion, and
RECOMMENDED DECISION**

INTRODUCTION

This document is a summary of the proposal to amend the Washington State Potato Commission Marketing Order. It contains background information on the need for the amendments, summarizes the process that has been followed, recaps the testimony at the public hearings, lists the Director's findings, and recommends the proposal be sent to a referendum of potato producers.

BACKGROUND AND TECHNICAL REPORT

On June 25, 2001, the U.S. Supreme Court issued a decision that called into question the ability of a Commodity Commission that is established and operated in the way most of Washington's Commodity Commissions are, to continue to engage in their usual activities and to require producers to pay assessments for generic advertising and promotion.

In the case of *United Foods, Inc. vs. United States*, the U.S. Supreme Court held that the mandatory assessment to fund a generic advertising program under the Mushroom Promotion, Research, and Consumer Information Act was a violation of the First Amendment because it required producers to pay for a message that they may not agree with. This decision was a shock to agriculture across the country as it had been assumed that the funding of generic promotions with mandatory assessments was settled four years earlier when the Court rejected a First Amendment challenge to a similar program in *Glickman vs. Wileman Bros. & Elliott, Inc.* In *Glickman vs. Wileman*, the Court rejected the First Amendment argument by saying that the advertising program in question was constitutional because it was part of a comprehensive scheme of regulation for the agricultural commodities.

While the 2001 Supreme Court decision only applied to the national Mushroom Council's advertising program, the Court's ruling raised questions about its potential impact on other state and federal marketing orders carrying out similar activities. Since the *United Foods* decision, a number of state and federal marketing orders around the country have been challenged on First Amendment grounds.

On March 31, 2003, the Federal District Court for the Eastern District of Washington (Judge Edward Shea) ruled that the mandatory Apple Commission assessments being collected under the version of RCW 15.24 in effect at that time, were unconstitutional because they violated the First Amendment. In essence, the Court ruled that certain apple growers were being required to pay for a message that they did not agree with.

The Apple Commission argued that it should not be subject to challenge under the First Amendment because the Commission is part of the state government and is entitled to "government speech" protections because it speaks the message of Washington government with regard to the positive qualities of Washington apples. But the Court disagreed.

In reviewing the court rulings, the Director of Agriculture and the current Commodity Commissions determined it would be in the best interest of Washington's agricultural producers and industries, our rural communities, the state's economy, and the citizens of the state for Commodity Commissions to continue

to exist in Washington. Based on the ruling against the Apple Commission, the Commodity Commission laws, RCW 15.65 and 15.66, needed to be amended.

Amendments to the Commodity Commission laws were modeled in response to the *United Foods* decision, the *Wileman* decision, the Apple Commission decision, and a decision involving the Federal Beef Act. The Federal Beef Act withstood a First Amendment challenge at the federal district court level because the court determined that the National Beef Board was speaking on behalf of the government when it promoted beef and beef products.

Government is free to speak without being subject to First Amendment challenges. Legislation was written in 2002 and 2003 to increase Department of Agriculture oversight of Commodity Commissions to strengthen the position that Washington's Commodity Commissions are entitled to government speech protection because they speak the message of Washington government with regard to their particular commodity, and to update the statutes. The Washington Legislature passed the amendments. The amendments to the Commodity Commission laws:

1. Clarify the intent of the legislature in authorizing and establishing Commodity Commissions and including them in the existing comprehensive regulatory scheme of agriculture.
2. Expand a Commodity Commission's potential purposes for existing (*such as to be involved in commodity related matters such as irrigation, processing, transportation, handling, or assist with pest control, etc.*).
3. Affirm that Washington Commodity Commissions have the authority, when there is sufficient oversight by the Director, to speak on behalf of Washington state government on commodity and commodity-related issues.
4. Provide for the ability to add additional Commission members (*for RCW 15.66 Commissions*) and the ability to have the Director of Agriculture appoint a majority of Commodity Commission board members.
5. Provide that the Director of Agriculture is a voting member of a Commission board.
6. Authorize the Director to review and approve a Commission's budget, projects, and programs.
7. Reiterate the importance of the Commission's role for the state of Washington.
8. Update and clarify various provisions of RCW 15.65 and 15.66, including those relating to issuing, amending, and terminating a Marketing Order and record keeping.
9. Authorize Commodity Commissions to take on additional powers and duties, if they choose to.

Some current Commodity Commission Marketing Orders no longer match the law they were adopted under. Therefore, the proposed amendments to the Washington State Potato Commission's Marketing Order will bring it in line with some of the changes to the Commodity Commission law. The proposed changes also add additional powers and duties that the Commission believes will be of benefit to the potato industry and Washington's rural communities. The proposed amendments will implement some of the changes passed in 2002 and 2003.

The recent United States Supreme Court decision in *Johanns vs. LMA* held that Commodity Commission speech activities qualify as government speech when the government exercises sufficient control over the content of the message in a Commission's advertising, marketing, and promotional activities and the government is ultimately responsible for the speech. The Potato Commission has chosen to eliminate its authority to engage in marketing, advertising, and promotional activities rather than authorize the Director of Agriculture to appoint a majority of board members after an advisory vote, as may be required for Commission activities to qualify as government speech. Instead, the Commission will continue to directly elect its board members and has decided to discontinue advertising, marketing and promotional activities.

At the public hearings held on August 17 and 18, 2005, Karen Bonaudi, Interim Executive Director for the Washington State Potato Commission, and Matt Harris, Director of Trade for the Washington State Potato Commission, presented the above background information in the form of a technical report. The Marketing Order amendments were explained and an opportunity for questions was provided.

The specific amendments to the Marketing Order are shown in Attachment "A".

PROCEDURAL STEPS

This matter came before the Director of the Washington State Department of Agriculture (WSDA) pursuant to a petition filed by the Washington State Potato Commission requesting amendments to the Commission's Marketing Order (WAC 16-516) under the authority set forth in RCW 15.66, Washington State Agricultural Commodity Commissions Act.

On July 1, 2005, WSDA filed with the Washington State Code Reviser a Notice of Proposed Rulemaking (CR-102) requesting comments on the proposed Marketing Order amendments. The notice was published in the *Washington State Register* on July 20, 2005 (WSR #05-14-119).

Also, on July 22, 2005, a notice about the petition to amend the Marketing Order and notice of the public hearings on the proposed amendments was mailed to affected potato producers and interested parties. A Notice of Public Hearing was published in the *Columbia Basin Herald* on July 27 and 28, 2005 and the *Skagit Valley Herald* on July 28 and 29, 2005.

Pursuant to RCW 15.66.070, public hearings were held on August 17, 2005, beginning at 2:00 p.m. at the Big Bend Community College, Applied Technology Education Center, 7611 Bolling Street NE, Moses Lake, WA and August 18, 2005, beginning at 2:00 p.m. at the Best Western Cotton Tree Inn Convention Center, Lopez Room, 2300 Market Street, Mount Vernon, WA. Written comments on the proposal were accepted through the close of business (5:00 p.m.) on August 19, 2005.

TESTIMONY ON AMENDMENTS

Under RCW 15.66.070 through 15.66.090 and RCW 34.05, Administrative Procedure Act, the Department collected testimony to determine whether affected producers or interested parties supported the proposed amendments to the Washington State Potato Commission Marketing Order.

Supporters of the proposed amendments provided the following comments:

- I believe the people who elect those on the Commission are better served when they come from the growers themselves and elected by the growers themselves versus being appointed by someone else who may not know the real issues or concerns of the growers. I strongly urge that the amendments be put to the vote of the Washington potato growers for adoption.
- Nine growers, individually, provided the following testimony: I support the proposed Marketing Order amendments because they benefit Washington state potato growers and the industry. I also support sending the proposed amendments to a referendum.

WSDA received no comments opposed to the proposed amendments.

A total of 9 individuals signed in at the hearings, providing oral testimony. WSDA received written testimony on the proposed amendments from 1 individual. A tally of the attendance at the hearings and the positions of those providing oral and written testimony on the proposed amendments are as follows:

- Of the 10 individuals who provided oral and/or written testimony:

10 supported the proposed amendments
0 opposed the proposed amendments
0 indicated no position

FINDINGS AND CONCLUSION

Based on the entire record, including facts, testimony, and evidence presented and received at the public hearings, any written comments received by WSDA, information relating to the 2002 and the 2003 amendments to chapter 15.66 RCW and matters of which the Director may take official notice under RCW 15.66.070, including the history and background of the Washington State Potato Commission and the decisions and settlement agreement in *Washington State Apple Advertising Commission v. Jack Nickell Orchards, LLC, et al.*, the Director makes the following findings and conclusion:

1. The Washington State Potato Commission was formed under a Marketing Order approved by a vote of the affected producers pursuant to the Washington State Agricultural Commodity Commissions Act (Chapter 15.66 RCW) that became effective on July 23, 1956.
2. The Marketing Order establishing the Washington State Potato Commission (WAC 16-516) currently provides the following purposes:

WAC 16-516-030 Marketing order purposes. (1) Advertising and sales promotion plans.

(a) The potato commission, subject to the provisions of the act, is hereby authorized to prepare plans, administer and conduct programs and expend monies for advertising and sales promotion for promoting the sale of potatoes for the purpose of maintaining existing markets or creating new and/or larger markets for potatoes grown in the state of Washington, including but not necessarily limited to the following:

(i) Increasing the sale and consumption of Washington produced potatoes through the use of the press, radio, television and all other advertising media.

(ii) Dealer service work, trade promotion, publicity, market development and expansion activities.

(iii) Prevention, modification, or elimination of trade barriers which restrict the free flow of potatoes produced in this state.

(iv) Presentation of facts to and negotiations with state, federal, or foreign governmental agencies on matters which effect the marketing of potatoes produced in this state, including cooperation with any agency or group in efforts to increase per capita consumption of potatoes, and such other activities and programs which are consistent with the objectives of this marketing order and the act.

(b) In carrying out any advertising and sales promotion plans or programs, the commission may engage or hire such advertising medias as may be necessary to accomplish the purposes of the act and this order, arrange for advertising space, display material and other advertising material, conduct dealer service work or may use any other methods consistent with the act and this marketing order which the commission considers appropriate in promoting or creating new and larger domestic or foreign markets for potatoes, or in maintaining existing markets.

(c) Programs and plans adopted by the commission under this marketing order shall be directed towards promoting the sale of potatoes without reference to any particular private brand or trade name and sales promotion and advertising programs so conducted shall not disparage the value, quality, sale or use of any other agricultural commodity or make use of any unwarranted or false claims on behalf of potatoes.

(2) Research.

(a) The potato commission, subject to the provisions of the act, is hereby authorized to carry on or cause to be carried on any necessary and proper marketing, production, processing or handling research or survey studies relating to potatoes and to expend monies for such purposes.

(b) Such research and survey studies may include, but shall not necessarily be limited to the following:

- (i) Production problems, such as soil, seed, fertilizers, irrigation, insecticides and the like.*
- (ii) Developing objective maturity and quality factors for potatoes; more disease-resistant potatoes for marketing, and determining any special nutritive qualities of potatoes produced in Washington.*
- (iii) Improving techniques and methods of harvesting potatoes.*
- (iv) Developing and improving methods of processing potatoes and potato by-products for the purpose of increasing and expanding their use for food and industrial purposes.*
- (v) Improving packing and handling techniques which promote more efficient operation in the marketing and distribution of potatoes.*
- (vi) Investigating transportation rates and service costs, and if the commission after such investigation finds transportation rates and service costs are restricting the free flow of potatoes produced in this state the commission is authorized to institute proper action before the interstate commerce commission or such other agency or body deemed necessary to correct the situation.*
- (c) The commission, may, in addition to the activities enumerated above, carry on any other proper and necessary research and/or survey programs and activities consistent with, and subject to the limitations of the act. Such research and/or survey studies may include the collection of data and information relating to potatoes; the analysis of such data and information; the dissemination of such data, information and analysis; and such other investigation that falls within the scope of the marketing, producing, processing or handling of potatoes.*
- (3) Standards and grades.*
 - (a) The potato commission, subject to the provisions of the act, is hereby authorized to define, establish and provide labeling requirements for improving standards and grades for potatoes, as provided in the act, not inconsistent with the horticultural laws of this state with respect to the same, and to expend monies for such purposes.*
 - (b) The commission shall give reasonable written notice to all producers, handlers and persons directly affected by the labeling requirements issued pursuant to this section, not less than ten days prior to the effective time of such requirements.*
 - (c) The commission shall be authorized to cooperate with state and federal agencies or departments responsible for revising and modernizing grades and standards and labeling of potatoes.*
 - (d) Nothing in this section shall be construed as authorizing the commission to set minimum grades, sizes or maturity of potatoes which a producer may sell, offer for sale or ship.*
- (4) Unfair trade practices. The potato commission, subject to the provisions of the act, is hereby authorized to investigate and take necessary action to prevent unfair trade practices and to correct, where possible, trade practices which hinder marketing of Washington produced potatoes or potato products. Information acquired in such investigation shall be confidential and shall be released only to the extent necessary to effectuate the purposes of the act.*
- (5) Standards, grades, labels and trade practices. The provisions covering standards, grades, labels and trade practices shall apply with respect to potatoes marketed or sold within this state regardless of where produced.*

3. Pursuant to RCW 15.66, the Washington State Potato Commission filed a petition requesting amendments to the Commission's Marketing Order (WAC 16-516) on May 9, 2005.
4. Pursuant to RCW 15.66 and RCW 34.05, WSDA issued notices, held hearings, and collected testimony to determine whether affected producers or interested parties supported the proposed amendments to the Washington State Potato Commission Marketing Order.
5. The Marketing Order continues to provide for the direct election of the Commission's board members rather than authorizing a majority of board members to be appointed by the Director of the WSDA. The proposed amendments also eliminate the authority of the Commission to engage in advertising, marketing, and promotional activities. The Director finds that the Commission has chosen to stop engaging in these speech activities as its means of avoiding a First Amendment challenge. Instead,

the Commission will respond to requests for public information and provide information and education to the potato industry as authorized in these proposed amendments.

6. Although only a small segment of the industry chose to attend or comment at the public hearings, the Director finds that the majority of those testifying or attending the hearings supported the proposed amendments to the Washington State Potato Commission Marketing Order.
7. The Director finds that even though the proposed amendments take some of the power to directly run the Commission away from the Commission's board by giving oversight responsibilities to the Director, the current state of the law and the challenges to Commodity Commissions make it necessary to do so, so that the Commission can continue to engage in the activities authorized in the revised Marketing Order.
8. The Director finds that it is appropriate to include the proposed amendments that are detailed in Attachment "A" in the proposal to amend the Marketing Order. They include:
 - Expanded policy statements clarifying that the Commission was established to benefit the industry and the citizens of the state of Washington (WAC 16-516-005).
 - A comprehensive list of the Marketing Order purposes and programs to benefit the potato industry and the state's citizens (WAC 16-516-006).
 - Elimination of the Commission's authority to engage in promotion and advertising activities (WAC 16-516-005 and 16-516-006).
 - Revised definitions (WAC 16-516-010).
 - Increasing the board membership from 14 to 15 members (WAC 16-516-020).
 - Adding the WSDA Director as a voting Commission member (WAC 16-516-020).
 - Decreasing the representative districts from 5 to 3 and redefining them with county designations (WAC 16-516-020).
 - Updates to the membership qualifications (WAC 16-516-020).
 - Clarifications to the nomination, election, and vacancy processes (WAC 16-516-020).
 - Increasing the oversight of the Commission's programs, activities, and budget by the WSDA (WAC 16-516-020).
 - Adding additional powers and duties of the Commission, some of which include more power to contract, work cooperatively with other governments and assist with the investigation and control of exotic pests and diseases that affect potatoes, maintain lists, request and audit records, and hold intellectual property rights (WAC 16-516-020).
 - Updates to meeting and administrative procedures (WAC 16-516-020).
 - Removal of language referring to payment of assessments through the purchase of stamps (WAC 16-516-040).
 - Clarifications to the public disclosure exemption for affected producer information and records (WAC 16-516-050).
 - Repeal WAC 16-516-002, 16-516-030, and 16-516-070.
9. The Director finds that it is in the best interest of the potato industry and the public interest that the potato industry remains a viable agricultural industry in Washington State.
10. The Director concludes that the evidence and the record support a finding that the proposed amendments effectuate the declared policies and purposes of RCW 15.66 and WAC 16-516.

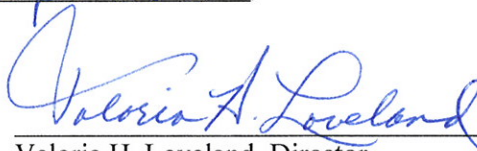
RECOMMENDED DECISION

NOW, THEREFORE, based on the entire record in this matter, the Director enters the following Recommended Decision:

The proposal to amend the Washington State Potato Commission Marketing Order (WAC 16-516) will be sent to a referendum pursuant to RCW 15.66.090. A ballot will be mailed to all potato producers on the list of affected producers.

If the referendum results approve the proposal, the proposal will be adopted on or about January 4, 2006 and the proposal will become effective February 4, 2006. If the referendum results defeat the proposal, no further action will be taken on the petition.

DATED this 8th day of September, 2005.



Valoria H. Loveland, Director
Washington State Department of Agriculture

STATEMENT OF RIGHTS AND FURTHER PROCESS

Under RCW 15.66.080, all interested parties shall have a period of not less than fifteen (15) days to file statements with the Director in support of or in opposition to this Recommended Decision. All statements must be received at the following address **no later than 5:00 p.m. on September 30, 2005:**

Lynn Briscoe, Commodity Commission Coordinator
WSDA, Administrative Regulations Program
PO Box 42560
Olympia, WA 98504

FAX: (360) 902-2092
Email: lbriscoe@agr.wa.gov

The Director will take all statements received into consideration when making her Final Decision. The Final Decision may be the same as the Recommended Decision or it may be revised in light of any additional statements.



Attachment "A"
PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Washington State Department of Agriculture

<input type="checkbox"/> Preproposal Statement of Inquiry was filed as WSR _____; or	<input checked="" type="checkbox"/> Original Notice
<input type="checkbox"/> Expedited Rule Making--Proposed notice was filed as WSR _____; or	<input type="checkbox"/> Supplemental Notice to WSR _____
<input type="checkbox"/> Proposal is exempt under RCW 34.05.310(4).	<input type="checkbox"/> Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject) Washington Potatoes, Chapter 16-516 WAC, the Washington State Potato Commission Marketing Order

Hearing location(s):

Big Bend Community College
Applied Technology Education Center
7611 Bolling Street NE
Moses Lake, WA 98837

Best Western Cotton Tree Inn
Convention Center, Lopez Room
2300 Market Street
Mount Vernon, WA 98273

Submit written comments to:

Lynn Briscoe, Commodity Commission Coordinator
WA State Dept of Agriculture
PO Box 42560
Olympia, WA 98504
E-mail: lbriscoe@agr.wa.gov
Fax: (360) 902-2092 By: August 19, 2005

Date: August 17, 2005

Time: 2:00 p.m.

Date: August 18, 2005

Time: 2:00 p.m.

Assistance for persons with disabilities: Contact

Rochelle Painter at (360) 902-2060 by August 10, 2005.

TTY: (360) 902-1996

Date of intended adoption: January 4, 2006

(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: During past legislative sessions, significant amendments were made to the Washington State Potato Commission's enabling statute, RCW 15.66. These statutory changes prompted amendments to its Marketing Order, WAC 16-516. Proposed amendments expand the Commission's policy and purpose statements, update the definitions, add additional power and duties to benefit the industry, update meeting and administrative procedures, and expand the Commission's information and education role.

In addition, the proposed amendments also eliminate the Commission's authority to engage in promotion and advertising activities, increase the board membership from 14 to 15 members, decrease the representative districts from 5 to 3 and redefine them with county designations, clarify the nomination and election process, and remove language referring to payment of assessments through the purchase of stamps.

The following Marketing Order sections are affected by the proposed amendments:

1. Repeal WAC 16-516-002, Director's findings and decision approving a marketing order.
2. Amend WAC 16-516-005, Marketing order for Washington potatoes -- Policy and purpose.
3. New Section WAC 16-516-006, Marketing order purposes.
4. Amend WAC 16-516-010, Definitions.
5. Amend WAC 16-516-020, Potato commission.
6. Repeal WAC 16-516-030, Marketing order purposes.
7. Amend WAC 16-516-040, Assessments and assessment funds.
8. Amend WAC 16-516-050, Information reports.
9. Repeal WAC 16-516-070, Effective time.

Reasons supporting proposal: The proposed amendments are intended to make the Marketing Order consistent with the Commodity Commission enabling statute, RCW 15.66, for a commission that has chosen to discontinue its promotion and advertising activities and to implement the petition received from the Washington State Potato Commission in accordance with RCW 15.66.030, 15.66.040, and 15.66.055.

Statutory authority for adoption: RCW 15.66.030, 15.66.053, 15.66.055, and chapter 34.05 RCW

Statute being implemented: Chapter 15.66 RCW

Is rule necessary because of a:

Federal Law?

☐ Yes ☒ No

Federal Court Decision?

☐ Yes ☒ No

State Court Decision?

☐ Yes ☒ No

If yes, CITATION:

DATE

July 1, 2005

NAME (type or print)

William E. Brookreson

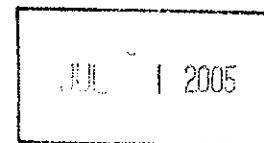
SIGNATURE

TITLE

Deputy Director

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED



TIME 3:53
WSR 05-14-119

AM
PM

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Any rule proposal that results from this rulemaking process will not be adopted unless the proposed rules are also approved in a referendum of affected potato producers pursuant to RCW 15.66.

Name of proponent: (person or organization) Washington State Potato Commission

☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting.....Lynn Briscoe, WSDA	Olympia	(360) 902-2043
Implementation.....WA State Potato Commission and Department of Agriculture	Olympia Moses Lake	(360) 902-2043 (509) 765-8845
Enforcement.....Same as above.	Same as above.	Same as above.

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☐ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

☒ No. Explain why no statement was prepared.

Any adoption of amendments to WAC 16-516 would ultimately be determined by a referendum vote of the affected parties. A formal small business economic impact statement under RCW 19.85 is not required because of the exemption granted in RCW 15.66.053 (2).

Is a cost-benefit analysis required under RCW 34.05.328?

☐ Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

☒ No: Please explain: The Department of Agriculture and the WA State Potato Commission are not named agencies in RCW 34.05.328 (5) (a) (i).

AMENDATORY SECTION (Amending Marketing Order for Washington Potatoes, effective 7/23/56)

WAC 16-516-005 Marketing order for Washington potatoes--
Policy ((and purpose)) statement. ((The marketing of agricultural products within this state is affected with a public interest. It is declared to be the policy and purpose of the "act" and of this "potato marketing order" to promote the general welfare of the state by enabling potato producers to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing and labeling of the potatoes they produce, and in promoting and increasing the sale of such potatoes.)) (1) The production of potatoes within this state is in the public interest. It is vital to the continued economic well-being of the citizens of this state and their general welfare that its potatoes be properly encouraged by enabling producers of potatoes to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of the potatoes they produce.

(2) It is in the overriding public interest that support for the potato industry be clearly expressed and that adequate protection be given to the industry and its activities and operations as part of a comprehensive agricultural industry to:

(a) Eliminate or limit impediments affecting the sale and use of Washington state's potatoes in local, domestic, and foreign markets;

(b) Respond to public requests for information regarding the quality, care, and methods used in the production of Washington state's potatoes;

(c) Respond to public requests for information regarding the nutritional, health-giving qualities and dietetic value of Washington state's potatoes and products; and

(d) Support and engage in programs or activities that benefit the planting, production, harvesting, handling, processing, transportation and utilization of potatoes produced in Washington state.

(3) The director is authorized to implement and administer chapter 15.66 RCW through this marketing order.

(4) The Washington state potato commission exists primarily for the benefit of the people of the state of Washington and its economy.

NEW SECTION

WAC 16-516-006 Marketing order purposes. The purpose of this marketing order is to promote the general welfare of the state and to maintain and protect existing markets, increase production efficiency, and ensure a fair regulatory environment for potatoes produced in Washington. The commission is designated by the director to conduct the following programs in accordance with chapter 15.66 RCW:

(1) Unfair trade practices and foreign regulatory barriers.

(a) The commission, subject to the provisions of the act, may investigate alleged unfair trade practices and foreign regulatory barriers that hinder the sale, production, transport, or export of Washington-produced potatoes or potato products.

(b) If the commission finds as a result of an investigation that trade or foreign regulatory barriers are restricting the free flow of potatoes produced in this state, the commission may institute appropriate action before any agency or body deemed necessary to correct the situation.

(c) If the commission finds as a result of an investigation that transportation rates and service costs are restricting the free flow of potatoes produced in this state, the commission may institute proper action before the interstate commerce commission or such other agency or body deemed necessary to correct the situation.

(d) Information and records acquired in any such investigation are exempt from public disclosure to the extent provided in RCW 15.66.105 and 42.17.31907 or any other applicable statute, except that such information may be released, to the extent necessary to effectuate the purposes of the act, in the presentation of facts to and negotiations with state, federal, or foreign governmental agencies on matters which affect the production, irrigation, transport, use, consumption, export, or sale of potatoes grown in this state, as authorized in RCW 15.66.105.

(2) Research.

(a) The commission, subject to the provisions of the act, may carry on or cause to be carried on any necessary and proper production, irrigation, processing, transportation or handling research relating to potatoes and to expend moneys for those purposes.

(b) The commission, subject to the provisions of the act, may engage in research that may include, but shall not necessarily be limited to, the following:

(i) Production problems, such as soil, seed, fertilizers, irrigation, insecticides, fungicides, herbicides and the like;

(ii) Developing and testing new potato cultivars with improved disease resistance, processing, nutritional, or horticultural characteristics;

(iii) Improving techniques and methods of harvesting potatoes;

(iv) Developing and improving methods of processing potatoes and potato by-products for the purpose of increasing and expanding their use for food and industrial purposes;

(v) Improving packing and handling techniques which promote more efficient operation in the marketing and distribution of potatoes;

(vi) Determining any special nutritive, nutraceutical or pharmaceutical qualities of potatoes produced in Washington;

(vii) Improving production practices, resource requirements and availability, and similar issues or matters that may impact the continued production of potatoes in Washington.

(c) The commission may, in addition to the activities enumerated above, carry on any other proper and necessary research programs and activities consistent with and subject to the limitations of the act. Such research may include the collection of data and information relating to potatoes; the analysis of such data and information; and the dissemination of such data, information and analysis to potato producers and handlers and in response to public requests.

(d) The commission, subject to the provisions of the act, is authorized to coordinate potato producers' potato crop protection chemical registrations and integrated pest management (IPM) implementation.

(3) Standards and grades.

(a) The potato commission, subject to the provisions of the act and chapter 34.05 RCW, may adopt rules to define, establish and provide labeling requirements for improving standards and grades for potatoes, as provided in the act, not inconsistent with the horticultural laws of this state with respect to the same, and to expend moneys for such purposes.

(b) The commission shall give reasonable written notice to all producers, handlers and persons directly affected by the labeling requirements issued pursuant to this section in accordance with rule-making proceedings conducted under chapter 34.05 RCW.

(c) The commission may cooperate with state and federal agencies or departments responsible for revising and modernizing grades and standards and labeling of potatoes.

(d) Nothing in this section shall be construed as authorizing the commission to set minimum grades, sizes or maturity of potatoes which a producer may sell, offer for sale or ship.

(4). Public education. The commission may respond to requests from the public for information regarding:

(a) The economic, environmental and nutritional value and benefits of potatoes and the Washington potato industry;

(b) The quality, care and methods used in the production of Washington potatoes;

(c) The handling, preparation and utilization of Washington potatoes and potato products;

(d) The effects of trade, transportation and regulatory barriers on the Washington potato industry.

(5) Grower and industry education. The commission, subject to the provisions of the act, may conduct programs to provide information and education to the Washington state potato industry including:

(a) Public opinion or awareness research information for producers of potatoes;

- (b) Industry-related education and training;
- (c) Information and services enabling producers to meet resource conservation objectives and keep current with issues impacting their business.

AMENDATORY SECTION (Amending WSR 00-11-180, filed 5/24/00, effective 6/24/00)

~~WAC 16-516-010 Definitions. ((As used in this marketing order, the following terms shall have the following meanings:~~

~~(1) "Director" means the director of agriculture of the state of Washington or his duly appointed representative;~~

~~(2) "Act" means the Washington Agricultural Enabling Act, being chapter 15.66 RCW;~~

~~(3) "Person" includes any individual, firm, corporation, trust, association, partnership, society or any other organization of individuals;~~

~~(4) "Producer" means any person who is engaged in the business of producing or causing to be produced for market in commercial quantities potatoes as herein defined grown in the state of Washington;~~

~~(5) "Commercial quantities" shall mean and include five hundredweight or more;~~

~~(6) "Hundredweight" or "affected unit" are synonymous and mean and include each one hundred pound unit or any combination of packages making a one hundred pound unit of potatoes;~~

~~(7) "Potatoes" means and includes all kinds and varieties of Irish potatoes grown in the state of Washington and marketed, sold or intended for use for human consumption;~~

~~(8) "Potato commission" or "commission" are synonymous and mean the commission established pursuant to the provisions of WAC 16-516-020;~~

~~(9) "Marketing season" or "fiscal year" are synonymous and mean the twelve month period beginning July 1 of any year and ending upon the last day of June, both dates inclusive;~~

~~(10) "Handler" means any person engaged in the business of handling, selling, processing, storing, shipping, or distributing potatoes which he has purchased or acquired from a producer, or which he is shipping for or on behalf of a producer, and shall include any lending agencies for commodity credit corporation loan to producers, but shall not include a producer engaged in transporting potatoes produced by him for grading, washing, sorting, sacking, or otherwise preparing for marketing or market;~~

~~(11) "Sale" means a transaction wherein the property in or to potatoes is transferred from the producer to a purchaser for consideration. "Sale" shall also include an agreement to acquire such property for a consideration;~~

~~(12) "Affected area" or "area of production" are synonymous~~

~~and mean and include all of the state of Washington.~~

~~(13) "District" means the geographical divisions of the area of potato production established pursuant to the provisions of WAC 16-516-020.)~~ The following terms shall have the meanings given in RCW 15.66.010, supplemented by the following additional definitions:

(1) "Act" means the Washington state agricultural commodity commissions statute, chapter 15.66 RCW;

(2) "Affected area" or "area of production" are synonymous and mean all of the state of Washington;

(3) "Affected commodity" means potatoes as defined in this section;

(4) "Affected handler" means any handler of potatoes;

(5) "Affected producer" means any producer who is subject to this marketing order;

(6) "Agricultural development" means activities intended to increase the efficiency, productivity, or fair market access of Washington potatoes and potato products;

(7) "Commercial quantities" shall mean and include five hundredweight or more per growing season;

(8) "Director" means the director of agriculture of the state of Washington or any qualified person or persons designated by the director of agriculture to act for him or her concerning some matter under this chapter;

(9) "District" means the geographical divisions of the area of potato production established pursuant to the provisions of WAC 16-516-020;

(10) "Handler" means any person who acts, either as principal, agent, or otherwise, in the processing, packing, shipping, selling, marketing, or distributing of potatoes that are not produced by the handler. "Handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler;

(11) "Hundredweight" or "affected unit" are synonymous and mean and include each one hundred pound unit or any combination of packages making a one hundred pound unit of potatoes;

(12) "Marketing season" or "fiscal year" are synonymous and mean the twelve month period beginning July 1 of any year and ending upon the last day of June, both dates inclusive;

(13) "Person" includes any individual, firm, corporation, limited liability company, trust, association, partnership, society or any other organization of individuals or any unit or agency of local or state government;

(14) "Potato commission" or "commission" are synonymous and mean the commission established pursuant to the provisions of WAC 16-516-020;

(15) "Potatoes" means and includes all kinds and varieties of Irish potatoes grown in the state of Washington and marketed, sold or intended for use for human consumption;

(16) "Producer" means any person engaged in the production of potatoes grown in Washington for market in commercial quantities, and it includes a landowner, landlord, tenant or other person that participates in the growing or producing of the affected commodity

and who has a proprietary interest in the potatoes so produced.
"To produce" means to act as a producer;

(17) "Research" means scientific research conducted by a university or other accredited researcher on pest and disease surveys; pest and disease control tools or techniques; planting, harvesting, handling and other production or processing tools or techniques; health or nutritional qualities or benefits of potatoes or potato products; and environmental issues including, but not limited to, water use, water quality, water quantity, and erosion control related to production of potatoes or potato products. Results of agricultural research conducted under the provisions of this marketing order shall be public information;

(18) "Sale" means a transaction wherein the property in or to potatoes is transferred from the producer to a purchaser for consideration. "Sale" shall also include an agreement to acquire such property for a consideration;

(19) "Unfair trade practice" means any practice that is unlawful or prohibited under the laws of the state of Washington including but not limited to Titles 15, 16, and 69 RCW and chapters 9.16, 19.77, 19.80, 19.84, and 19.83 RCW, or any practice, whether concerning interstate or intrastate commerce that is unlawful under the Federal Trade Commission Act of 1914, as amended (38 Stat. 719; 15 U.S.C. Sec. 41 et seq.) or the violation of or failure to accurately label as to grades and standards in accordance with any lawfully established grades or standards or labels.

AMENDATORY SECTION (Amending WSR 00-11-180, filed 5/24/00, effective 6/24/00)

WAC 16-516-020 Potato commission. (1) Establishment and membership. A potato commission is hereby established to administer this marketing order which shall be composed of nine members who shall be producers elected from districts as provided in subsections (2) and (3) of this section and ~~((four))~~ five members who shall be appointed by the elected producer members as provided in subsection (4) of this section. In addition, the director shall ~~((be an ex officio))~~ appoint one member ((of)) to the commission to represent the director as a voting member of the commission.

(2) Representative districts. For the purpose of nomination and selection of producer members of the commission, the affected area of the state of Washington shall be divided into ~~((five))~~ three representative districts as follows:

(a) "District No. 1" shall be ~~((the east irrigation district of the Columbia project, plus the area of Grant County not included in either the Quincy or south irrigation districts and lies east of R27E, plus the area of Adams County not included in either the south or Quincy irrigation districts, plus))~~ and include the

counties of Douglas, Chelan, Okanogan, Grant, Adams, Ferry, Stevens, Pend Oreille, Spokane, Whitman and Lincoln.

(b) ~~"District No. 2" shall be ((the Quincy irrigation district of the Columbia Basin project, plus the area of Grant County not included in the east or south irrigation districts and lies west of R28E7))~~ and include the counties of Kittitas, ((Douglas, Chelan and Okanogan)) Yakima, Klickitat, Benton, Franklin, Walla Walla, Columbia, Garfield, and Asotin.

(c) ~~"District No. 3" shall be and include the counties of ((Benton, Yakima and Klickitat.~~

~~(d) "District No. 4" shall be the south irrigation district of the Columbia Basin project, plus the areas of Franklin County not included in the south district, plus the counties of Walla Walla, Columbia, Garfield and Asotin.~~

~~(e) "District No. 5" shall be and include)) Skagit and all other counties in the state of Washington.~~

(3) Elected membership. Producer members shall be elected from the districts as follows:

(a) ~~((Two of the producer members, being))~~ Positions 1, 2, 3, and ((2)) 4 shall be elected from District No. 1.

(b) ~~((Two of the producer members, being positions 3 and 4,))~~ Positions 5, 6, 7, and 8 shall be elected from District No. 2.

(c) ~~((Two of the producer members, being positions 5 and 6, shall be elected from District No. 3.~~

~~(d) Two of the producer members, being positions 7 and 8, shall be elected from District No. 4.~~

~~(e) One of the producer members, being))~~ Position 9((7)) shall be elected from District No. ~~((5))~~ 3.

~~((Members))~~ (4) Appointed membership.

(a) Positions 10, 11, 12, 13, and 14 shall be appointed by the elected producers ((shall be appointed for positions 10, 11, 12 and 13)) as provided in subsections (1) and (5)(b) of this section.

((4)) (b) Position 15 shall be appointed by the director as provided in subsection (1) of this section.

(5) Membership qualifications. Commission members shall be citizens and residents of this state, over the age of ~~((twenty-five))~~ eighteen years.

(a) Producer members of the commission shall be producers of potatoes in the district in and for which they are nominated and elected. The producer members shall be and have been actively engaged in producing potatoes for a period of at least three years, and shall derive a substantial proportion of their incomes from the sale of potatoes. A producer member of the commission must have paid an assessment to the commission on potatoes in each of the preceding three calendar years. The qualifications of producer members of the commission as herein set forth must continue during their term of office.

(b) Members of the commission appointed by the elected producers to positions 10, 11, 12, 13, and 14 shall be ((either)) potato producers((7)) or handlers or others active in matters directly relating to Washington state potatoes ((or persons not so related)) and have a demonstrated record of service in the potato industry in Washington state.

~~((5))~~ (6) Term of office. The term of office of the elected and appointed producer members of the commission ~~((members))~~ shall be three years from the date of their election or appointment and until their successors are elected or appointed and qualified. Commencing on July 1, ~~((2000))~~ 2005, the term of office for members of the commission shall be as follows: Positions 1, 5 and 7 shall terminate June 30, ~~((2002))~~ 2008; positions 3, 4 and 6 shall terminate June 30, ~~((2003))~~ 2006; ~~((and))~~ positions 2, 8 and 9 shall terminate June 30, ~~((2001. Appointed members for))~~ 2007; positions 10 and 11 shall terminate ~~((their terms))~~ June 30, ~~((2002))~~ 2008; positions 12 and 14 shall terminate June 30, ~~((2003))~~ 2006; and position 13 shall terminate June 30, ~~((2004))~~ 2007. ~~((The appointed members of the commission shall be elected by a majority of the elected commissioners.~~

~~(6))~~ (7) Nomination and election of commission members. Nomination and election of commission members shall be as set forth in the act and specified by the director. Dates will be set as follows:

(a) Not earlier than ~~((February 16))~~ March 18 and not later than ~~((March))~~ April 2 of each year, the director shall give notice by mail to all producers ~~((, in a))~~ in each district ~~((wherein a vacancy))~~ in which one or more open positions will occur in the commission ~~((of such vacancy or such vacancies))~~ and call for nominations. Nominating petitions shall be signed by five persons qualified to vote for such candidates. Such notice shall state the final date for filing said petitions which shall be not earlier than ~~((March))~~ April 7 and not later ~~((then March))~~ than April 12 of each year.

(b) Not earlier than April 17 and not later than May 2 of each year, the director shall ~~((submit))~~ mail ballots ~~((by mail))~~ to all affected producers in ~~((the))~~ each district ~~((wherein the vacancy))~~ in which one or more open positions will occur ~~((not earlier than March 17 and not later than April 1 of each year))~~. Ballots ~~((shall be returned))~~ must be received by the director not later than ~~((May))~~ June 1 of such year. Such mailed ballot shall be conducted in a manner so that it shall be a secret ballot in accordance with rules ~~((and regulations to be promulgated))~~ adopted by the director. An affected producer is entitled to one vote.

(c) ~~((With respect to the initial potato commission, the director shall call for nominations in the notice of his decision following the hearing designated in the act. The ballot specified herein shall be forwarded to the producer at the time the director's proposed marketing order is mailed to the producers for their referendum assent.~~

~~(d) Except with respect to the initial potato commission, the members of the commission not elected by the producers shall be elected by a majority of the commission))~~ Each appointed producer member of the commission shall be elected by majority vote of the elected commissioners in a public vote at a public meeting held within ninety days prior to the expiration of the appointed member's term.

~~((7))~~ (8) Vacancies.

~~((a) To fill any vacancy occasioned by the failure to qualify~~

~~of any person elected by the producers as a member of the commission, or in the event of the death, removal, resignation or disqualification of any member, the director shall call for nominations and conduct such election within the district wherein the vacancy occurred in the manner provided in subsection (6) of this section.~~

~~(b) To fill nonelective vacancies caused by other reasons than the expiration of the term, the new members shall be elected by the commission at its first meeting after the occurrence of the vacancy.~~

~~(8))~~ In the event of a vacancy on the board in an elected or commission-appointed position, the remaining members shall select a qualified person to fill the unexpired term. The appointment shall be made at the board's first or second meeting after the position becomes vacant. Any member so appointed shall serve until the normal expiration of his or her term.

(9) Powers and duties of commission. The commission shall have the following powers and duties:

(a) To administer, enforce, direct and control the provisions of this marketing order and of the act relating thereto;

(b) To elect a chairman and such other officers as the commission may deem advisable; and to select subcommittees of commission members;

(c) To adopt, rescind, and amend rules ~~((and regulations))~~ reasonably necessary for the administration and operation of the commission and the enforcement of its duties under this marketing order;

(d) To employ and discharge at its discretion such administrators and additional personnel, attorneys, ~~((advertising and))~~ research agencies and other persons and firms that it may deem appropriate and pay compensation to the same;

(e) To acquire personal property and lease office space and other necessary real property and transfer and convey the same;

(f) To institute and maintain in its own name any and all legal actions, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities necessary to carry out the provisions of the act and of this marketing order;

(g) To keep accurate records of all its receipts and disbursements, which records shall be open to inspection and audit by the department and other legal agencies of the state and make annual reports therefrom to the state auditor;

(h) To borrow money and incur indebtedness;

(i) To make necessary disbursements for routine operating expenses;

(j) To collect the assessments of producers as provided in this marketing order and to expend the same in accordance with and to effectuate the purposes of the act and this marketing order;

(k) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of this marketing order during each fiscal year. The commission, at least forty-five days prior to the beginning of its fiscal year, shall prepare and submit to the director its budget, research plan, and

its commodity-related education and training plan;

(l) To accept and receive gifts and grants from private persons or private and public agencies and expend the same to effectuate the purposes of the act and this order;

(m) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes set forth in this marketing order;

(n) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes set forth in this marketing order. Personal service contracts must comply with chapter 39.29 RCW;

(o) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, use, distribution and trade barriers impacting potatoes and potato products;

(p) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of the attorney general;

(q) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale or use of potatoes as requested by any elected official or officer or employee of any agency and as authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission;

(r) To assist and cooperate with the department or any other local, state, or federal government agency in the investigation and control of exotic pests and diseases that could damage or affect trade of the affected commodity;

(s) To acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research related to the affected commodity;

(t) To engage in appropriate fund-raising activities for the purpose of supporting activities of the commission authorized by this marketing order;

(u) To establish a foundation using commission funds as grant money for the purposes established in this marketing order;

(v) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of this marketing order and data on the value of each producer's production for a minimum three-year period pursuant to RCW 15.66.140(18);

(w) To maintain a list of the names and addresses of persons who handle potatoes within the affected area and data on the amount and value of the potatoes handled by each person pursuant to RCW 15.66.140(19) for a minimum three-year period;

(x) To maintain a list of names and addresses of all affected persons who produce potatoes and the amount, by unit, of potatoes produced during the past three years pursuant to RCW 15.66.143(1);

(y) To maintain a list of all persons who handle potatoes and the amount of potatoes handled by each person during the past three years pursuant to RCW 15.66.143(2);

(z) To check records of producers or handlers of the affected commodity during normal business hours to determine whether the appropriate assessment has been paid; and

(aa) To exercise such other powers and perform such other duties as are necessary and proper to effectuate the purposes of the act and of this order.

~~((9))~~ (10) Procedure for commission.

(a) The commission shall by resolution establish a headquarters which shall continue as such unless and until so changed by the commission, at which headquarters shall be kept the books, records and minutes of the commission meetings.

(b) The commission shall hold regular meetings at least quarterly, with the time and date thereof to be fixed by the resolution of the commission. Notice of the meetings shall be published in the potato commission newsletter and sent to the appropriate general and agricultural media outlets.

(c) The commission may hold such special meetings as it may deem advisable and shall establish by resolution the time, place and manner of calling such special meetings with reasonable notice ~~((to the members: Provided, That the notice of any special meeting may be waived by a waiver thereof signed by not less than a quorum of the membership))~~ as required in RCW 42.30.080.

(d) Any action taken by the commission shall require the majority vote of the members present, provided a quorum is present.

(e) A quorum of the commission shall consist of at least ~~((eight))~~ nine members.

(f) No members of the commission shall receive any salary or other compensation from the commission, except that each member shall be paid a specified sum to be determined by resolution of the commission, which ~~((rate))~~ shall not exceed ~~((per day))~~ the compensation rate set by ((chapter 15.66)) RCW 43.03.230 or state travel expense rates in accordance with RCW 43.03.050 and 43.03.060 for each day spent in actual attendance at or traveling to and from meetings of the commission or on special assignments for the commission, ((together with subsistence and travel expense of the rate allowed by law to state employees)) except the commission may adopt by resolution provisions for reimbursement of actual travel expenses incurred by members of the commission in carrying out the provisions of this marketing order pursuant to RCW 15.66.130.

~~((10))~~ (11) Limitation of liability of commission members and employees. Obligations incurred by the commission and any other liabilities or claims against the commission shall be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof or against any other commission established pursuant to the act or the assets thereof or against any member officer, employee or agent of the commission in his individual capacity. The members of the commission, including employees thereof, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal agent, person, or employee, except for

their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall be several and not joint and no member shall be liable for the default of any other member.

AMENDATORY SECTION (Amending WSR 90-09-068, filed 4/18/90, effective 7/1/90)

WAC 16-516-040 Assessments and assessment funds. (1)
Assessments levied.

(a) On and after the effective date of this order, there is hereby levied and there shall be collected by the commission, as provided in the act, upon all potatoes grown in the state an annual assessment of four cents per hundredweight which shall be paid by the producer thereof upon each and every hundredweight of potatoes sold, processed, delivered for sale or processing by him or her or stored or delivered for storage when (~~such~~) storage or delivery for storage shall be outside the boundaries of this state: Provided, That no assessment shall be collected on the following:

(i) Potatoes grown and sold for seed under an established seed certification program;

(ii) Potatoes sold for livestock feed, regardless of grade;

(iii) Potatoes sold for nonfood products, such as industrial starch;

(iv) Potatoes of a producer's own production used by him or her on his or her own premises for seed, feed or personal consumption;

(v) Potatoes donated or shipped for relief or charitable purposes; or

(vi) Sales on a producer's premises by a producer direct to a consumer of five hundred pounds or less of potatoes from a producer's own production.

(b) The commission (~~(is authorized to)~~) may provide by rule (~~(and regulation)~~) for an assessment discount not to exceed twenty-five percent of the total hundredweight on field run or ungraded potatoes to allow for cull potatoes not used or intended for use for human consumption.

(c) No assessment levied or made collectable by the act under this order shall exceed three percent of the total market value of all (~~such~~) potatoes sold, processed or delivered for sale or processing by all producers of potatoes for the fiscal year to which the assessment applies.

(2) Collection of assessment.

(a) All assessments made and levied pursuant to the provisions of the act under this marketing order shall apply to the respective producer who shall be primarily liable therefore. (~~(To collect such assessments, the commission may require.~~

~~(i) Stamps to be known as "Washington potato commission stamps" to be purchased from the commission and fixed or attached to the containers, invoices, shipping documents, inspection certificates, releases or receiving receipts or tickets. Any such stamps shall be canceled immediately upon being attached or fixed and the date of such cancellation shall be placed thereon,~~

~~((ii))~~ (b) Handlers receiving potatoes from the producer, including warehousemen and processors ~~((to))~~ shall collect producer assessments from producers whose production they handle, and all moneys so collected shall be paid to the commission on or before the twentieth day of the succeeding month for the previous month's collections. Each handler shall at ~~((such))~~ times ~~((as))~~ required by rule ~~((and regulation required,))~~ file with the commission a return under oath on forms to be furnished by the commission, stating the quantity of potatoes handled, processed, delivered and/or shipped during the period prescribed by the commission ~~((7))~~.

~~((iii) Payment of)~~ (c) Producer assessments may be paid before the potatoes are shipped off the farm or ~~((payments of assessments))~~ at different or later times ~~((and in such event))~~. If assessments are paid after the potatoes are shipped off the farm, any person subject to the assessment shall give ~~((such))~~ adequate assurance or security for its payments as the commission shall require by rule.

~~((b))~~ (d) The commission ~~((is authorized to make reasonable))~~ may adopt rules ~~((and regulations))~~ in accordance and conformity with the act and with this section to effectuate the collection of assessments. On or before the beginning of each marketing season, the commission shall give reasonable notice to all producers, handlers and other affected persons of the method or methods of collection to be used for that marketing season and of the assessment discount, if any, allowable on field run or ungraded potatoes.

~~((c))~~ (e) No affected units of potatoes shall be transported, carried, shipped, sold, stored or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued ~~((or stamp canceled))~~, but no liability hereunder shall attach to common carriers in the regular course of their business. When any potatoes for which exemption as provided in subsection (1) of this section is claimed are shipped either by railroad or truck, there shall be plainly noted on the bill of lading, shipping document, container or invoice, the reasons for ~~((such))~~ the exemptions.

~~((d))~~ (f) Any producer or handler who fails to comply with the provisions of this subsection as herein provided shall be guilty of a violation of this order.

(3) Funds.

(a) Moneys collected by the potato commission pursuant to the act and this marketing order as assessments shall be used by the commission only for the purposes of paying for the costs or expenses arising in connection with carrying out the purposes and provisions of the act and this marketing order.

(b) At the end of each fiscal year the commission shall credit each producer with any amount paid by ~~((such))~~ the producer in.

excess of three percent of the total market value of all potatoes sold, processed, delivered for sale or processing during that period. Refund may be made only upon satisfactory proof given by the producer ~~((in accordance with reasonable rules and regulations prescribed by the director))~~, which may include bills of lading, bills of sale, or receipts.

AMENDATORY SECTION (Amending Marketing Order, Article V, effective 7/23/56)

WAC 16-516-050 Information reports. All persons subject to the provisions of this marketing order shall make and render ~~((such))~~ reports and furnish ~~((such))~~ information to the director or the commission as ~~((may be necessary or))~~ required under the act or this order ~~((to effectuate the purposes thereof))~~. ~~((Any))~~ Information and records obtained by ((any person pursuant to the provisions of this article shall be confidential and shall not be by him disclosed to any other person save to a person with like right to obtain the same or any attorney employed by the director of the commission to give legal advice thereon or by court order)) the director or commission are exempt from public disclosure to the extent provided in RCW 15.66.105 and 42.17.31907 or any other applicable statute.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 16-516-002	Director's findings and decision approving a marketing order.
WAC 16-516-030	Marketing order purposes.
WAC 16-516-070	Effective time.